

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

VIGNERI CHOCOLATE, INC.,

Plaintiff,

-VS-

MASSACHUSETTS BAY INSURANCE
COMPANY,

Defendant.

ECF CASE

**PETITION FOR REMOVAL
BY DEFENDANT**

Civ. Action No.

Massachusetts Bay Insurance Company, defendant in the above-captioned matter, for purposes of removing this action from the Supreme Court of the State of New York, County of Monroe, in which it is now pending, to the United States District Court, Western District of New York, respectfully states, shows and petitions to the Court as follows:

1. State Court Action. This is an action originally filed on or about September 9, 2015, in New York State Supreme Court, County of Monroe, Index No. 2015-10090, being a suit originally entitled and styled as *Vigneri Chocolate, Inc., Plaintiff, v. Massachusetts Bay Insurance Company, Defendant*. A copy of the original summons and complaint filed with the Monroe County Clerk's Office is annexed hereto as **Exhibit A**. The state court action was filed and venued in Monroe County, New York, within this Court's territorial jurisdiction.

2. Federal Jurisdiction. Upon information and belief, the plaintiff is incorporated and maintains a principal place of business in the State of New York.

Defendant, Massachusetts Bay Insurance Company (“Massachusetts Bay”), is incorporated in the State of New Hampshire with its headquarters and principal place of business in the State of Massachusetts. Also, upon belief and information provided by the plaintiff, the amount in controversy is claimed to exceed \$75,000.00, exclusive of interest and costs. Indeed, the plaintiff’s complaint seeks “a judgment in the amount of One Hundred Thousand Dollars (\$100,000), plus interest at the rate of nine percent (9%) from June 3, 2014”. See Exhibit A. Accordingly, this Court has original jurisdiction over this action based upon complete diversity of citizenship of the parties pursuant to 28 U.S.C. § 1332(a), and this civil action is one which may be removed pursuant to 28 U.S.C. § 1441.

3. Timeliness of Removal Petition. The summons and complaint were served on Massachusetts Bay on September 22, 2015, as shown by the acknowledgements of service of the New York State Department of Financial Service collectively attached hereto as **Exhibit B**. As such, removal of this action is timely under 28 U.S.C. § 1446(b), as made within 30 days of service.

4. Relief Requested. Defendant, Massachusetts Bay Insurance Company, Inc. respectfully requests that the United States District Court, Western District of New York accept this Petition for Removal, remove this case and action from the New York Supreme Court, County of Monroe and take and assume jurisdiction over this matter and issue such further orders and processes as may be necessary to the trial and conclusion thereof. This Petition for Removal is submitted and filed without

waiver of procedural or substantive defenses which are or may become available to the defendant.

DATED: Buffalo, New York
October 21, 2015

s/Marianne Cardo Zack
Marianne Cardo Zack, Esq.
Bar Roll No. 519513
MURA & STORM, PLLC
Attorneys for Defendant
930 Rand Building
14 Lafayette Square
Buffalo, New York 14203
(716) 855-2800
marianne.zack@muralaw.com

cc: Fernando Santiago, Esq.
SANTIAGO BURGER, LLP
Attorneys for Plaintiff
1250 Pittsford Victor Road
Building 100, Suite 190
Pittsford, New York 14534
(585) 563-2400

EXHIBIT A

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

VIGNERI CHOCOLATE, INC.,

Plaintiff,

SUMMONS

v.

Index No.:

MASSACHUSETTS BAY INSURANCE
COMPANY,

2015-10090

Defendant.


TO THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or Answer, Judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates Monroe County as the place of trial. The basis of the venue is Plaintiff's principal place of business.

Dated: September 9, 2015

SANTIAGO BURGER LLP


Fernando Santiago, Esq.
Attorneys for Plaintiff
1250 Pittsford Victor Road
Building 100, Suite 190
Pittsford, NY 14534
Tel.: (585) 563-2400

2015 SEP -9 PM 3:51
CLERK

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

VIGNERI CHOCOLATE, INC.,

Plaintiff,

v.

MASSACHUSETTS BAY INSURANCE
COMPANY,

Defendant.

COMPLAINT

Index No.:

2015-10090

Plaintiff, Vigneri Chocolate, Inc., by and through its attorneys, SANTIAGO BURGER LLP, for its Complaint against the Defendant, Massachusetts Bay Insurance Company, alleges upon information and belief as follows:

PARTIES

1. Plaintiff, Vigneri Chocolate Inc., (hereinafter referred to as "Plaintiff") is a New York corporation with its principal place of business at 810 Emerson Street, Rochester, Monroe County, New York.

2. Upon information and belief, Defendant, Massachusetts Bay Insurance Company (hereinafter referred to as "Defendant"), is a corporation domiciled in and organized under the laws of the State of New Hampshire and is a duly authorized insurance company licensed to issue insurance in the State of New York.

3. Upon information and belief, Defendant is an affiliate of The Hanover Insurance Group and its principal place of business is located at 440 Lincoln Street, Worcester, Massachusetts 01653-0002.

BACKGROUND

4. In or about November 2013, Defendant issued a Commercial Line Policy (Policy

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CLERK OF COURT
MONROE COUNTY
NEW YORK
15 SEP - 9 PM 3:51

No. ZDS 9791518 01) (the "Policy") to Plaintiff, insuring Plaintiff in the amount of \$100,000.00 for, among other things, the loss of or damage to "stock" or finished product, while "in transit".

5. The effective date of the Policy was November 29, 2013 through November 29, 2014.

6. During the effective period of the Policy, in or about January or February 2014, Plaintiff suffered a loss of "stock" while "in transit" covered under the Policy.

7. The total purchase price of Plaintiff's "stock" lost was in excess of \$230,000.00, resulting in a loss of net profits over and above the \$100,000.00 Policy limit.

8. In connection with this loss, Plaintiff timely filed a claim with Defendant.

9. At all relevant times, Plaintiff complied with all conditions precedent to obtain coverage under the Policy.

10. By letter dated June 3, 2014, Defendant denied the claim on the ground that the cause of loss was excluded under the Policy.

11. Defendant has wrongfully refused to pay Plaintiff the insurance benefits it is lawfully owed under the Policy, despite due demand.

12. Accordingly, Defendant has breached its obligation under the Policy.

AS AND FOR A FIRST CAUSE OF ACTION

13. Plaintiff repeats and realleges each preceding Paragraph as though fully incorporated and set forth in full herein.

14. Defendant is obligated under the terms of the Policy it issued to pay Plaintiff for the loss at issue.

15. Defendant breached the terms and conditions of the Policy at issue and has failed to pay the loss it is obligated to pay pursuant to the Policy.

16. As a result of this breach, Defendant has refused to pay Plaintiff for the loss it incurred in the amount of One Hundred Thousand Dollars (\$100,000.00), plus interest from the date of the loss when the obligation to make the payment accrued.

17. Statutory interest on the amount owed is nine percent (9%) from the date of Defendant's refusal to pay Plaintiff for the loss and its breach of the insurance contract.

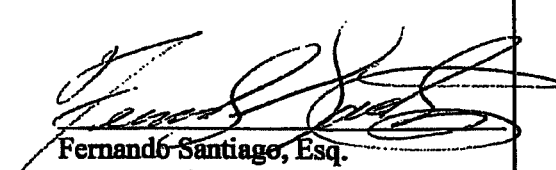
18. As a result of Defendant's breach, Plaintiff has been injured in the amount of One Hundred Thousand Dollars (\$100,000.00), plus statutory interest at the rate of nine percent (9%) from June 3, 2014.

WHEREFORE, Plaintiff demands that the Court grant judgment as follows:

- A. Awarding Plaintiff a judgment in the amount of One Hundred Thousand Dollars (\$100,000.00), plus interest at the rate of nine percent (9%) from June 3, 2014;
and
- B. Granting Plaintiff such other and further relief as the Court may deem just and proper.

Dated: September 9, 2015

SANTIAGO BURGER LLP



Fernando Santiago, Esq.
Attorneys for Plaintiff
1250 Pittsford Victor Road
Building 100, Suite 190
Pittsford, NY 14534
Tel.: (585) 563-2400

EXHIBIT B



NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Anthony J. Albanese
Acting Superintendent

STATE OF NEW YORK
Supreme Court, County of MONROE

Vigneri Chocolate, Inc.

Plaintiff(s)

2015-10090

against

Defendant(s)

Massachusetts Bay Insurance Company

RE :Massachusetts Bay Insurance Company

Attorney for Plaintiff(s) and Defendant(s) please take notice as follows:

Attorney for Plaintiff(s) is hereby advised of acknowledgement of service upon this Department Summons and Complaint in the above entitled action on September 22, 2015 at Albany, New York. The \$ 40.00 fee is also acknowledged.

Original to Attorney for Plaintiff(s):

Santiago Burger LLP
Fernando Santiago, Esq.
1250 Pittsford Victor Road
Building 100, Suite 190
Pittsford, New York 14534

Persuant to the requirement of section 1212 of the Insurance Law, Defendant(s) is hereby notified of service as effected above. A copy of the paper is enclosed.

Duplicate to Defendant:

CT Corporation System
Massachusetts Bay Insurance Company
111 Eighth Avenue
New York, New York 10011-0000

Jacqueline Catalfamo
Special Deputy Superintendent

Dated Albany, New York, September 21, 2015
559816



**Service of Process
Transmittal**

09/28/2015

CT Log Number 527886496

TO: Jennifer Lauro
The Hanover Insurance Group
440 Lincoln St, N-430
Worcester, MA 01653-0002

RE: Process Served in New York

FOR: Massachusetts Bay Insurance Company (Domestic State: NH)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Vigneri Chocolate, Inc., Pltf. vs. Massachusetts Bay Insurance Company, Dft.

DOCUMENT(S) SERVED: Letter, Summons, Complaint

COURT/AGENCY: Monroe County: Supreme Court, NY
Case # 201510090

NATURE OF ACTION: Insurance Litigation - Claim for policy benefits

ON WHOM PROCESS WAS SERVED: C T Corporation System, New York, NY

DATE AND HOUR OF SERVICE: By Regular Mail on 09/28/2015 postmarked: "Not Post Marked"

JURISDICTION SERVED : New York

APPEARANCE OR ANSWER DUE: Within 30 days after service

ATTORNEY(S) / SENDER(S): Fernando Santiago
Santiago Burger LLP
1250 Pittsford Victor Road
Building 100
Suite 190
Pittsford, NY 14534
585-563-2400

ACTION ITEMS: CT has retained the current log, Retain Date: 09/28/2015, Expected Purge Date: 10/03/2015

Image SOP

Email Notification, Service of Process ogclitmail@hanover.com

SIGNED: C T Corporation System

ADDRESS: 111 Eighth Avenue
13th Floor
New York, NY 10011

TELEPHONE: 212-590-9070

NEW YORK
DEPARTMENT OF
FINANCIAL SERVICES
ONE COMMERCE PLAZA
ALBANY, NY 12257

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